IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

FRIDAY, THE 6TH OCTOBER 2006 / 14TH ASWINA 1928

Crl.MC.No. 3356 of 2005()

CRIME NO. 314/C.R.2004 OF THE CBCID KOTTAYAM

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PETITIONERS:

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1. SEENA THOMAS,
   D/O.K.K.THOMAS, KANIYAMPARAMBIL HOUSE,
   VELIYANNOOR.P.O., AREEKARA, KOTTAYAM DISTRICT.

2. K.K. THOMAS, S/O. KURUVILLA,
   DO.

BY ADV. SRI.K.C.PETER

RESPONDENTS:

CIRCLE INSPECTOR OF POLICE,
C.B.C.I.D. CRIME BRANCH,
KOTTAYAM, REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

ADDL. R2: DIRECTOR GENERAL OF POLICE, KARANAKA STATES.

ADDL.R3: SUB INSPECTOR OF POLICE, PUUARPET POLICE STATION,
BANGALORE CITY.

(ADDL. R2 AND R3 IMPLEADED AS PER ORDER ON CRL.M.A.1030/06 DATED 28-7-2006.)

BY PUBLIC PROSECUTOR SRI PUZHAKKARA MUHAMMED.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 10-8-2006, THE COURT ON 06/10/2006, PASSED THE FOLLOWING:

K.R. UDAYABHANU, J.

CRL M.C. NO. 3356 of 2005

Dated, 6th October, 2006

ORDER

Petitioners are daughter and father, accused Nos. 1 and 2, in crime No.314/C.R. 2004 of the C.B.C.I.D. ,Kottayam with respect to the offences under sections 420, 468, 471, read with 34 IPC on the allegation that the petitioners along with the 3rd accused, who is no more, forged the Pre-Degree Certificate of the Mahathma Gandhi University for the year 1996-97 and the Ist petitioner got admission for the Nursing course in Karnataka in Kempa Gowda Institute of Nursing, Bangalore and completed the course on 31-8-2005 and thereby committed the above offences. While the case was pending investigation by the Kerala Police, the Karnataka police registered crime No.325/2004 at Upparpet police station, Bangalore city, for the same offences and the crime was investigated and charge sheet filed which was taken cognizance as C.C.10814/2005 by the 9th Chief Metropolitan Magistrate, Bangalore against the Ist petitioner as the 31st accused. The Kerala Police also filed final report on 4-10-2005. The contention is that that the dual proceedings pending before both the courts i.e. Karnataka as well as in the court of Judicial Magistrate of the First Class -V, Thiruvananthapuram (Mark List cases), is an abuse of the process

of the court and violative of article 20(2) of the Constitution of India.

2. At the time time of hearing, the counsel has confined his contentions relying on section 186 Cr.P.C. . As per Section 186, it is the High Court of the Sate where the Subordinate court in which the proceedings first commenced, that should decide the question as to where the trial should take place. In the present case, as per the documents produced, the JFCM court in Kerala took cognizance of the matter on 4-10-2005 whereas the 9th Chief Metropolitan Magistrate, Bangalore took cognizance of C.C.10184/2005 on 30-4-2005. Hence, evidently it is in the Karnataka court where the proceedings first commenced as envisaged in section 186 Cr.P.C. Section 186 Cr.P.C further provides that on the decision by the concerned High Court, all further proceedings in respect of that offence shall be discontinued in the court of the other State. Hence, I find that the Kerala High Court is not the court that is to decide the question vide section 186 Cr.P.C. The petitioner may initiate proceedings before the Karnataka High Court for an order under section 186 Cr.P.C., so that the petitioners need not stand trial before both the courts in Karnataka as well as in Kerala. **(State of M.P. v. Bahadursingh (1984 Crl.L.J.1065); Kuljeet Singh v. Central Bureau of Investigation,**

New Delhi (2000 Crl.L.J 3681).

The Crl.M.C. is disposed of as above.

(K.R.UDAYABHANU)

JUDGE.

kvm/-